

## JUSTIFICATION

3133-0121

### Notice of Change in Official or Senior Executive Officer Form and Individual Application for Approval of Official or Senior Executive Officer Form 2011

- 1. Explain the circumstances that make the collection of information necessary, including identification of any legal or administrative requirements that necessitate the collection.**

In October of 1990, the National Credit Union Administration Board approved regulations to implement Section 212 of the Federal Credit Union Act, which was added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. These regulations unofficially labeled "executive approvals for troubled credit unions," are contained in Sections 701.14 and 741.205 of the National Credit Union Administration (NCUA) Rules and Regulations.

Section 212 of the Federal Credit Union Act requires all insured natural person and corporate credit unions notify the National Credit Union Administration (NCUA) at least 30 days prior to a change in official or senior executive officer if that credit union is newly chartered or in troubled condition. This section requires notice from the insured credit union shall include information described in section 7(j)(6)(a) of the Federal Deposit Insurance Act about the individual.

The referenced section of the FDIA requires that any notice filed shall contain the following information:

The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

These requirements are captured in Part 701.14 of the NCUA Rules and Regulations. Copies of the referenced sections of the FCUA, NCUA Rules and Regulations, and the FDIA are attached as enclosure (1).

Section 701.14 of the NCUA Rules and Regulation implements Section 212 of the Federal Credit Union Act. Section 701.14 requires that within 10 calendar days of receipt, the Regional Director must inform the credit union either that the notice is complete or that additional specified information is required to be submitted within 30 calendar days. Additionally, this section requires the Regional Director or Director of Office of Corporate Credit Unions to issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice, otherwise the individual is approved. Section 741.205 of the NCUA Rules and Regulations requires federally insured state chartered credit unions to follow section 701.14.

Section 747 (Subpart J) of the NCUA Rules and Regulations sets forth the rights an individual or a credit union may exercise and procedures to be followed in responding to a notice of disapproval by NCUA.

To provide for a uniform method to gather information required to make the appropriate decision, this form was developed based on the forms currently used by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Office of Thrift Supervision.

**2. Indicate how, by whom, and for what purpose the information is to be used and the actual use the agency has made of the information received from the current collection.**

The information collected from these forms is used by the National Credit Union Administration to comply with the appropriate sections of the Federal Credit Union Act, 12 USC §1790a, which implements the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The information is also used by the various state supervisory authorities to review and consult with on the approval of new officials or senior executive officers at state chartered federally insured credit unions.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses) and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The individual credit union and the new official or senior executive officer are responsible for providing the required information. This information is not gathered electronically. The number of applications received each year does not make manual review a burden to agency staff.

**4. Describe efforts to identify duplication.**

Aside from the submission of the notice of change and individual application for approval of official, NCUA makes no other comprehensive collection of data from the public. There is no duplication of effort at the federal level, unless the affected individual is also applying for approval to become a senior executive officer or director at a troubled or newly chartered financial institution regulated by one of the other financial industry regulatory agencies. In our experience, that has not occurred.

At the state level, NCUA works in close cooperation with the National Association of State Credit Union Supervisors (NASCUS), which represents the SSAs in all states. This cooperative relationship with NASCUS representatives, and with individual SSAs as necessary, results in a mutually beneficial effort to obtain one set of forms from the proposed new official or senior executive officer to be used by both NCUA and the SSA. NCUA consults with the SSA as necessary prior to coming to a decision; however, in the end it is NCUA's statutory responsibility to decide the suitability of an individual to serve as an official or senior executive officer at a newly chartered or troubled federally insured credit union.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

The information required cannot be different for smaller institutions, thus the burden to small credit unions is no greater than for any other institution. Since volunteer officials often play a greater role in the decision making and operations of a smaller credit union, the level of information gathered to determine their fitness to serve in a troubled or newly chartered credit union is critical.

- 6. Describe the consequence to the federal program or policy activities if the collection were not conducted or were conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

By statute, the NCUA must make a determination as to the fitness of any individual seeking to serve as an official or senior executive officer of a newly chartered or troubled federally insured credit union. These are the types of institutions that require qualified individuals in these key positions to provide viability to the institution. The consequences of non-collection would be severe. A determination of fitness would not be based on information provided by the respondent. This determination would be arbitrary, and could result in the denial of fit applicants and/or the approval of unfit applicants to serve in key positions at financial institutions that are either in a troubled status or are newly chartered. Without the information gathered in these forms, a consistent and fair decision making methodology cannot be implemented.

- 7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines on 5 CFR 1320.6.**

The collection is conducted entirely within the guidelines outlined in 5 CFR 1320.6.

- 8. Provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, the frequency of collection, the clarity of instructions and recordkeeping, the disclosure, or reporting format, and the data elements to be recorded, disclosed, or reported.**

The collection of information sufficient to make a determination regarding the fitness of an individual to serve as an official or senior executive officer at a troubled or newly chartered credit union is due to the implementation of Part 701.14 of the NCUA Rules and Regulations regarding a change in official or senior executive officer. The notice of the final rule was published in the Federal Register on October 26, 1990. The volume number is Vol. 55, No. 208. The page number is 43084.

NCUA has an ongoing commitment to communicate and interact with the SSAs, through NASCUS and on an individual basis, as well as with the various credit union trade associations. The final rule requires the notification of a change in official be sent to the the SSA concurrently with the NCUA when the credit union is a state chartered federally insured credit union. NCUA will consult with the SSA before issuing a notice of approval or disapproval.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payment, gift, or remuneration is provided for completion of the required Notice of Change in Official form or Individual Application for Approval of Official form. The information requested provides the agency a consistent format to evaluate information on applicants in order to comply with statutory requirements (see item 1).

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

Certain information obtained in the application form and any information obtained in additional background research or as part of NCUA's supervisory process is confidential and exempt from release under the Freedom of Information Act. The Privacy Act notice is contained in the application.

**11. Provide additional justification for any questions of a sensitive nature, etc.**

The information required to be presented is mandated by statute. The Federal Credit Union Act, §212, requires the notice from the insured credit union shall include the following information:

The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

While some of the information may be considered sensitive, it is required by statute to be provided by the institution and/or individual respondent.

**12. Provide estimates of the hour burden of the collection of information. The statement should provide the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.**

NCUA estimates an average of 2 hours for the credit union to complete the "Notice of Change in Official" form, and 2 hours for the individual to complete the "Individual Application for Approval of Official" form. This estimate includes time to gather and maintain data in the required form, to review instructions, and to complete the information collection. NCUA estimated the burden by reviewing the time estimates used by the FDIC, OCC, OTS, and OCC for banks and individuals to complete virtually identical forms.

NCUA calculated the total number of responses for troubled institutions by evaluating the number of currently identified "troubled" institutions (349), the average number of senior executive officers (3 per institution), and the average number of officials (11 per institution). The total potential responses from troubled credit unions would be a maximum of 4,886 per year. Actual experience has been that roughly 10 percent of the total number of officials and senior executive officers are new in any given year at the affected credit union. That reduced the actual estimated responses to 489 per year for troubled credit unions. This is an increase from the previous 2004 OMB application, as the number of "troubled" institutions has increased from 216 to 349.

NCUA then calculated the total number of responses for newly chartered institutions. A newly chartered institution is defined as one that has been in existence less than two years. To determine the maximum number of responses, the number of newly chartered credit unions for the past three years was determined (2008 – 13, 2009 – 10, 3/31/2010 – 11). An annual average was determined, and then doubled to provide the total average number of newly chartered credit unions that are in existence less than 2 years. Based on this, it was determined that on average 23 newly chartered institutions are in existence at any point in time. The same number of positions per institution was used to determine there are potentially 322 responses from officials or senior executive officers at newly chartered credit unions. Because there is a higher probability that an official or senior executive officer will be new to their position in one of these credit unions, the response rate is estimated to be 50 percent, or 161 responses from the newly chartered credit unions.

The total number of responses from troubled and newly chartered credit unions is estimated to be 650 per year. The same number is used for the number of response from individuals applying to become officials or senior executive officers of troubled or newly chartered credit unions. This is due to the two forms, one required to be completed by the credit union and one by the individual. Based on the time estimate of 2 hours per individual and 2 hours per institution, the total estimated time to complete the forms by the public is 2,600 hours.

Of the total number of respondents, it is estimated that 139 will be from senior executive officers. This is based on 3 positions per institution times 349 troubled institutions times 10 percent response rate, plus 3 positions per newly chartered institution times 23 average newly chartered credit unions times 50 percent response rate, rounded to the nearest whole number.

Staff time to review the application package, conduct additional background checks, and prepare correspondence is estimated at 4 hours per occurrence. An occurrence is one change in official or senior executive officer, for which NCUA staff would review the credit union notice of change in official and the individual application for approval of official. Based on a total of 650 responses per year, the annual staff hours to review these packages are estimated to be 2,600 hours.

The total annual hour burden of completing and reviewing these forms is estimated to be 5,200 hours.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)**

Any and all equipment needed to collect and prepare the information required to complete the Notice of Change in official and the Individual Application for Approval of Official forms is equipment used for the customary and usual business of the credit union. No special or additional equipment is required; therefore, there is no additional cost.

**14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours; operational expenses, such as equipment,**

overhead, printing, and support staff; and any other expense that would not have been incurred without this collection of information.

Staff

*Central Office:*

<i>Analyst staff - 2 full-time persons @\$63/hr.</i>	<i>\$252,000</i>
<i>Technical staff - 2 full-time persons @\$55/hr.</i>	<i>\$220,000</i>
<i>Technical support staff – 10 full-time persons @\$30/hr.</i>	<i>\$600,000</i>

*Regional Offices:*

<i>Regional office staff – 320 hours @ \$63/hr.</i>	<i>\$20,160</i>
<i>Examiner field staff – 24,000 hours @ \$55/hr.</i>	<i>\$1,320,000</i>

<u>Printing, Assembly, and Mailing</u>	<i>\$240,000</i>
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<b>TOTAL ANNUAL FEDERAL GOVERNMENT COST:</b>	<b>\$2,652,160</b>
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*The estimate of annual costs to the Federal Government includes all costs associated with the collection, processing, and distribution of information. NCUA's monitoring of financial trends helps reduce the risk to the NCUSIF for losses in an ever-changing economic environment.*

**15. Explain the reasons for any program changes or adjustments reports in Items 13 or 14 of the OMB Form 83-I.**

There are no program changes or adjustments.

**16. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

There are no plans to publish the results from this collection of information.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

This action is not requested.

**18 Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

There are no exceptions to the certification statement.